

EXHIBIT 5

UNREDACTED PUBLIC VERSION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INGENICO INC.,

Plaintiff,

v.

IOENGINE, LLC,

Defendant.

Civil Action No. 18-826-WCB

IOENGINE, LLC,

Counterclaim Plaintiff,

v.

INGENICO INC.,
INGENICO CORP., and
INGENICO GROUP S.A.,

Counterclaim Defendants.

OMNIBUS PRETRIAL ORDER

On June 13, 2022, the court held a telephonic pretrial conference with the parties in this case. This order addresses several issues that were raised during the conference as well as other issues relating to the conduct of the trial on liability.

1. Each day of the trial will begin at 9:00 a.m. and run until 5:30 p.m. Eastern Time. Those times may be adjusted in light of the jurors' needs, if necessary.

IOENGINE has simply noted that the statements were made on cross-examination in depositions, that the deponents were represented by counsel, and that PayPal was motivated to develop their testimony through its examination. Dkt. No. 468 at 7. But those features are typical of many depositions; they are not sufficient to justify the admission of the deposition testimony under Rule 804(b)(1), and they are plainly insufficient to constitute the “extraordinary circumstances” necessary to justify admission under Rule 807.

The residual hearsay rule was not designed to create an evidentiary penumbra around the hearsay exceptions set forth in Rules 803 and 804, so as to allow hearsay into evidence when it resembles evidence that would satisfy the requirements of those rules but falls short in some respect. *See Creamer v. Gen. Teamsters Local Union* 326, 560 F. Supp. 495, 498 (D. Del. 1983) (“[W]here there is a specific hearsay exception applicable to a clearly defined category of evidence such as former testimony, but the evidence fails to satisfy the requirements of the specific exception, the evidence should not be admitted under the residual exception.”); *Zenith*, 505 F. Supp. at 1263–64 (“[T]he residual exceptions cannot be invoked when there is a specific exception which sets forth conditions governing the admissibility of a clearly defined category of hearsay evidence.”). Rule 807 is plainly inapplicable here.

Ingenico’s motion in limine barring the admission of the depositions of PayPal witnesses in the PayPal action on hearsay grounds is therefore GRANTED.